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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/456,693	12/09/1999	DASA LIPOVSEK	50036/021002	6778

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EXAMINER

SCHNIZER, HOLLY G

ART UNIT	PAPER NUMBER
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1653

DATE MAILED: 05/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER
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DATE MAILED:

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**Commissioner of Patents and Trademarks**

The amendment filed on 1 Feb 2002 amended claims 1 and 8-22 previously drawn to the elected invention of a single protein and thereby making all claims read on a library of proteins (including fusion proteins) is a presentation of claims drawn to what would have been a non-elected invention had the claims been present in the application prior to the office action mailed 17 Jul 2001. The current amendment is therefore considered non-responsive (MPEP § 821.03).

The amended claims 1 and 8-22 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons. The amended claims are directed to a collection of peptides whereas the original claims were directed to a single peptide. Absent factual evidence to the contrary, each peptide in the library is structurally, physically, chemically, and biologically distinct, one from the other. Each peptide/protein would require distinct and different patent and non-patent technical literature searches. In addition, there is no indication in the response of the particular peptide that must be in the library upon which patentability under 35 U.S.C. 101, 112, 102, and 103 would have been based. Furthermore, claimed as a library, certain claims (e.g., claim 18+) are also form a nucleic acid library (i.e., the claims can be interpreted as a nucleic acid bonded to -peptide) and as such, it is also a library of polynucleotides - a collection/combination of polynucleotides which is a different invention than that originally claimed. As a collection of polynucleotides, there is no designation of the one particular polynucleotide that must be in the collection upon which patentability under 35 U.S.C. 101, 112, 102 and 103 would have been based.

Applicant has received an action on the merits for the originally presented invention which is directed to a single peptide, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1 and 8-22 as currently amended would have been withdrawn from consideration as being directed to a non-elected invention had they been present in the application prior to the office action mailed 17 Jul 2001. See 37 CFR 1.142(b) and MPEP § 821.03.

Claims 1 and 8-22 as presently amended do not read on the elected invention because they are now directed to a library of proteins. Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Holly Schnizer whose telephone number is (703) 305-3722. The examiner can normally be reached on Mon. & Thurs., 8 am to 5:30 pm and Tues. & Wed. 9 - 2:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low, can be reached at (703) 308-2923. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for

regular communications and (703) 308-4242 for After-Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196

HS  
17 May 2002

*Christopher S. F. Low*  
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